

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

JOHN DYESS,

Plaintiff,

v.

No. 3:07CV-635-WKW

AUBURN UNIVERSITY,

Defendant.

**DEFENDANT, AUBURN UNIVERSITY'S MEMORANDUM IN SUPPORT
OF MAGISTRATE'S REPORT AND RECOMMENDATION**

The Defendant, Auburn University (“Auburn”), respectfully files the following memorandum in support of the Report and Recommendation entered by the Magistrate Judge on August 13, 2008 (Doc. No. 40), and in opposition to the Plaintiff’s further filing of August 21, 2008 (Doc. No. 41).

Auburn filed its Motion for Summary Judgment on June 6, 2008 (Doc. No. 35, 36, 37), which included a detailed statement of facts construed in the light most favorable to the Plaintiff (*i.e.*, assuming for the sake of argument that all of the Plaintiff’s allegations were true, even though they are not). In his response to Auburn’s Motion, Plaintiff essentially re-filed Auburn’s statement of material facts, and made a conclusory cross-motion for Summary Judgment in his favor, without any relevant supporting argument, analysis, or evidence.

In the Report and Recommendation, the Magistrate Judge carefully reviewed the facts and the controlling case law. The Magistrate Judge correctly found:

- That the only claims that needed to be addressed were those asserted both before the EEOC and in his Complaint (Report and Recommendation at 11);
- That with regard to Dyess' claims for sex harassment, Dyess' allegations, taken as true, failed to rise to the "severe and pervasive" threshold defined by the relevant precedents (*Id.* at 14-24); and
- That with regard to Dyess' claims for unlawful discharge, Dyess failed to show that he was treated differently than a comparator similarly situated in all material respects, so the burden of articulating a legitimate, nondiscriminatory reason for discharge did not even shift to Auburn (*Id.* at 24-27).

Finally, pursuant to 28 U.S.C. § 1337(c), the Magistrate Judge recommended that the Court decline to exercise supplemental jurisdiction over Dyess' putative state law claims. (*Id.* at 27.)

The Report and Recommendation completely and accurately analyzes the facts and the law applicable to this case. Plaintiff's post-Report and Recommendation filing (Doc. No. 41) fails to make any intelligible argument that the Magistrate Judge erred in any way. Therefore, Plaintiff's filing cannot even be

considered “objections” sufficient to trigger the Court’s *de novo* review of any part of the Report and Recommendation. *See* 18 U.S.C. § 636(b)(1)(C).

For the reasons explained in Auburn’s Motion for Summary Judgment and in the Magistrate Judge’s Report and Recommendation, Auburn is entitled to judgment in its favor as a matter of law. The Report and Recommendation should be sustained and adopted as the order and judgment of this Court.

Respectfully submitted,

/s Aaron L. Dettling
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CERTIFICATE OF SERVICE

I hereby certify that on this the 26th day of August, 2008, I mailed a true and correct copy of the foregoing to the Plaintiff via first-class mail addressed as follows:

John W. Dyess, III
1509 Union Street
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/s Aaron L. Dettling
OF COUNSEL